

ADVISORY OPINION NO. #91-54

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 1, 1991

GOVERNMENTAL BODY SEEKING OPINION

A State Employee

OPINION SOUGHT

Whether it is a violation of the Ethics Act for an employee of a State Department to seek a position with a governmental agency which is regulated by his State Department?

FACTS RELIED UPON BY THE COMMISSION

The requestor is currently employed by a State Department as a Engineering Technician II. His job responsibilities include reviewing engineering, geological and hydrogeological proposals; reviewing field reports of facilities to determine compliance with applicable technical standards and departmental regulations; reviewing laboratory and field test results to determine chemical properties of materials and write technical reports on observations from field inspections and laboratory analyses, all in relation to environmental protection and the natural resources of the State.

The public employee would like to submit an application for employment to another State agency. The available position is titled Environmental Specialist II and some of the job duties include planning, monitoring, prevention, control and abatement of air, noise, water, hazardous constituent and solid pollutants. He would assist in managing the preservation program for cultural, historic and natural resources. Also, he would serve as a point of contact on all concerns pertaining to environmental protection matters within the State. The requestor has stated that this governmental agency is regulated by his current State Department.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(h)(1) states in pertinent part that...no full-time public...employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself...to be employed by any person who is or may be regulated by the governmental body which he...serves while he...is employed or serves in the governmental agency...

West Virginia Code 6B-1-3(f) states in pertinent part that... "Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

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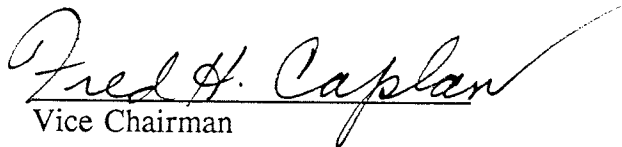
Subsection 6B-2-5(h) of the Ethics Act prohibits a full-time public employee who exercises policymaking, nonministerial or regulatory authority from seeking employment with, or allowing himself to be employed by **any person** who is regulated by the governmental agency which he serves while he is employed by such agency.

The requestor does have the requisite authority contemplated by this subsection since he performs policymaking, nonministerial and regulatory functions in relation to protection of the environment and the natural resources of the State. Consequently, he may not seek employment with any person who is or may be regulated by his governmental agency.

However, subsection 6B-1-3(f) of the Ethics Act defines "Person" as an individual, corporation, business entity, labor union, association, firm, partnership or other such organization. Since the definition does not include governmental agencies the Commission has determined that the prohibition against seeking employment with regulated persons established in subsection 6B-2-5(h)(1) of the Ethics Act would not apply to seeking employment with regulated governmental agencies.

Therefore, it would not be a violation of subsection 6B-2-5(h)(1) of the Ethics Act for an employee of a State Department to seek an employment position with a governmental agency which is regulated by his State Department.

The Commission would remind the requestor that pursuant to subsection 6B-2-5(b)(1) of the Ethics Act a public official or employee is prohibited from using his office or prestige for private gain. Therefore, it would be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for a public official or employee to use his authority or the responsibilities of his public office to solicit employment with regulated governmental agencies.


Vice Chairman